In the High Court of Punjab and Haryana at Chandigarh

I.T.R. No. 157 of 1998

Date of Decision: 26.02.2007

The Commissioner of Income Tax, Haryana, Rohtak

…Applicant

Versus

Smt. Rajwanti Dhall

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Yogesh Putney, Advocate,
for the Applicant-Revenue.

JUDGMENT

M.M. KUMAR, J.

The revenue has approached this Court by invoking the provisions of Section 256(1) of the Income Tax Act, 1961, for adjudicating upon the following question of law, which emerges out of the order dated 19.2.1996, passed by the Income Tax Appellate Tribunal, Delhi Bench 'A', New Delhi, in I.T.A. No. 1387/Del/91, in respect of the assessment year 1985-86:-

> "Whether on the facts and in the circumstances of the case, the Ld. ITAT was justified in law in holding that property bearing No. 1-B-34, NIT Faridabad owned by

the assessee was not a residential house within the meaning of proviso to section 54F(1) of the I.T. Act?"

After hearing learned counsel for the revenue, we find that the Commissioner of Income Tax (Appeals) as well as the Tribunal has categorically held that the assessee was entitled to exemption from capital gain under the provisions of 54F of the Income Tax Act, 1961. The aforementioned conclusion has been arrived at on the basis of categorical finding to the effect that the capital gain earned by the assessee had been spent on the acquisition of residential property. Further there is categoric finding of fact on record that the assessee was not the owner of any other residential property on the date of acquisition of above referred property. The finding recorded has not been shown to be perverse on the basis of any material on record. The authorities below on appreciation of evidence on record have taken a view, which in the facts and circumstances cannot be held to be perverse.

In view of the above, we answer the question against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

February 26, 2007
Pkapoor